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Attorneys for Movants and Plaintiffs,  
LORI M. BROOKS and STEVEN BROOKS

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA – FRESNO DIVISION

In Re:	) Case No. 17-13797
	) DC No.
TULARE LOCAL HEALTH CARE DISTRICT	) Chapter 9
dba TULARE REGIONAL MEDICAL CENTER,	) Tulare County Superior Court Case No.
Debtor.	) VCU266862
LORI M. BROOKS and STEVEN BROOKS,	) <b>MOTION FOR RELIEF FROM AUTOMATIC</b>
Plaintiffs,	) <b>STAY UNDER 11 U.S.C. §362 (WITH</b>
	) <b>SUPPORTING DECLARATION)</b>
v.	) <b>Hearing:</b>
	) <b>Date : March 1, 2018</b>
TULARE LOCAL HEALTH CARE DISTRICT	) <b>Time : 9:30 a.m.</b>
dba TULARE REGIONAL MEDICAL CENTER;	) <b>Dept. : B</b>
RICHARD FIGHTLIN, M.D.; ARTHUR WONG,	) <b>Courtroom : 13</b>
M.D.; and DOES 1 to 10, inclusive,	)
Defendants.	)

LORI M. BROOKS and STEVEN BROOKS (hereinafter “Movants”) seek relief from the automatic stay to TULARE LOCAL HEALTHCARE DISTRICT dba TULARE REGIONAL MEDICAL CENTER, the Debtor, and moves this Court as follows:

**JURISDICTION**

1. Jurisdiction exists under 28 U.S.C. §1334. Venue is proper under 28 U.S.C. §1408. The District Court for the Eastern District of California has generally referred these matters to the

1 Bankruptcy Court for hearing pursuant to 28 U.S.C. §157(a) and United States District Court, Eastern  
2 District of California General Orders 182 and 223. This is a core proceeding within the meaning of 28  
3 U.S.C. §157(b)(2)(G). This is a contested matter under F.R.B.P. Rule 9014. This motion is made  
4 pursuant to 11 U.S.C. §362(d)(1) & (2) and LBR 4001-1 and 9014-1(f)(2).

5 **MOTION**

6 2. Debtor filed a voluntary petition under Chapter 9 of Title 11, U.S.C. case number 17-  
7 13797, in the Eastern District of California on September 30, 2017.

8 3. Movants are plaintiffs in a medical malpractice civil action entitled LORI M. BROOKS  
9 and STEVEN BROOKS v. TULARE LOCAL HEALTH CARE DISTRICT dba TULARE REGIONAL  
10 MEDICAL CENTER; RICHARD FIGHTLIN, M.D.; ARTHUR WONG, M.D.; and DOES 1 to 10,  
11 inclusive, Case No. VCU266862 in the Superior Court of California, County of Tulare filed on  
12 September 12, 2016. (Kalajian decl. ¶3, Ex. "A.")

13 4. The Brooks matter arises from an injury caused by surgical packing left inside  
14 Movant's vagina following a hysterectomy performed at Defendant TULARE REGIONAL MEDICAL  
15 CENTER on September 16, 2015. Thereafter she was seen in the emergency room at Defendant  
16 TULARE REGIONAL MEDICAL CENTER for persistent pelvic pain when the surgical packing was  
17 found. As a result of this matter, Defendant TULARE REGIONAL MEDICAL CENTER established  
18 stringent protocols to prevent any future occasions of leaving surgical packing inside patients  
19 following surgeries.

20 5. Defendant TULARE REGIONAL MEDICAL CENTER was a hospital licensed to do  
21 business in the County of Tulare, State of California, and employed physicians, nurses, assistants,  
22 attendants and other persons to care for and treat Movant who received treatment at said facility.

23 6. For the damages alleged in the Anderson matter, Defendant TULARE REGIONAL  
24 MEDICAL CENTER is insured by a BETA Risk Management Authority insurance policy. (Kalajian  
25 Decl. ¶4, Ex. "B.")

26 7. At the time Defendant TULARE REGIONAL MEDICAL CENTER filed its voluntary  
27 petition under chapter 9, it had a dispositive motion for summary judgment pending. (Kalajian Decl.  
28 ¶5, Ex. "C.")



LAW

11. The United States Supreme Court and other federal courts previously ordered removal of automatic stays where the debtors' insurers cover the movants' claims, finding the movants' access to the insurance proceeds will not burden the debtors' effective reorganization of assets. (See, *Foust v. Munson S.S. Lines*, 299 U.S. 77, 87 (1936); *Matter of Holtkamp*, 669 F.2d 505, 508-509 (7th Cir. 1982); *Matter of Nkongho*, 59 Bankr. 85, 86 (N.J. 1986); *In re Celectro-Knit Fabrics, Inc.*, 24 Bankr. 326, 328 (S.D.N.Y. 1982).) Accordingly, an automatic stay should not preclude claimants from maintaining a lawsuit against a bankrupt insured as long as the insurer pays the claimants' eventual recovery. (See, *Foust, supra*, 299 U.S. at 87; *Matter of Holtkamp, supra*, 669 F.2d at 508-509; *Matter of Nkongho, supra*, 59 Bankr. at 86; *In re Celectro-Knit Fabrics, supra*, 24 Bankr. at 328.)

12. Further good cause exists in that Movants seek recovery only from applicable insurance and any defense has been tendered to the insurance carrier such that the Debtor need not personally defend the Action from its own proceeds or proceeds from its bankruptcy state. Accordingly, there is no monetary component that the Debtor will have to face.

13. Additionally, under 11 U.S.C. §362(d)(2), these claims no way affect any property right of the Debtor, and will not in any way impair any property that is necessary for the Debtor's debt adjustment, if any.

14. This Court should grant Movants' request for relief from the automatic stay because Movants' pursuit of the Debtor's insurance proceeds will not interfere with the Debtor's Chapter 9 bankruptcy proceedings. Movants agree not to proceed against either the Debtor or its estate in excess of the Debtor's insurance coverage.

15. Movants request relief from stay to allow Defendant TULARE REGIONAL MEDICAL CENTER to file another dispositive motion and get out of the case so Movants can proceed against the other named Defendants.

WHEREFORE, Movants respectfully pray as follows:

A. For an order granting relief from the automatic stay pursuant to 11 U.S.C. §362(d)(1) as to the Debtor allowing Movants to continue with the Action as set forth above;

B. For an order that the 14-day stay described in Federal Rules of Bankruptcy Procedure Rule 4001(a)(3) be waived; and

C. For such other and/or further relief as the Court deems just and proper.

DATED: January 24, 2018

BARADAT & PABOOJIAN, INC.

By: Kevin Kalajian

DANIEL R. BARADAT  
KEVIN B. KALAJIAN  
Attorney for Plaintiffs,  
LORI M. BROOKS and  
STEVEN BROOKS



My business address is 720 W. Alluvial Avenue, Fresno, California 93711. I am employed in Fresno County, California. I am over the age of 18 years and am not a party to this case.

On the date indicated below, I served the foregoing document(s) described as **MOTION FOR RELIEF FROM AUTOMATIC STAY UNDER 11 U.S.C. §362 (WITH SUPPORTING DECLARATION)** on all interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Attorneys for Defendant, TULARE LOCAL  
HEALTH CARE DISTRICT dba TULARE  
REGIONAL MEDICAL CENTER

Attorney for Defendant,  
RICHARD FIGHTLIN, M.D.

XX (BY MAIL) I am readily familiar with the business' practice for collection and processing of correspondence for mailing, and that correspondence, with postage thereon fully prepaid, will be deposited with the United States Postal Service on the date noted below in the ordinary course of business, at Fresno, California.

XX BY ELECTRONIC TRANSMISSION - I caused a PDF version of said document to be transmitted by electronic mail through Odyssey eFileCA to the party(s) identified above using the e-mail address(es) indicated.

EXECUTED ON January 24, 2018, at Fresno, California.

XX (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Heather Raymond